

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2002-KA-0568**
VERSUS * **COURT OF APPEAL**
CATHERINE COLLINS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
*
*
*
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 400-755, SECTION "C"
Honorable Sharon K. Hunter, Judge
* * * * *
Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty)

Harry F. Connick
District Attorney
Leslie Parker Tullier
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Mary Constance Hanes
LOUISIANA APPELLATE PROJECT
P. O. Box 4015

New Orleans, LA 70178-4015

COUNSEL FOR DEFENDANT/APPELLANT

**CONVICTION AFFIRMED; SENTENCE AMENDED, AND
SENTENCE AFFIRMED AS AMENDED**

Defendant Catherine Collins was charged by bill of information with aggravated battery in violation of La. R.S. 14:34. Defendant pleaded not guilty at her September 18, 1998, arraignment. On January 12, 1999, the trial judge tried the defendant after she waived her right to jury trial through counsel. On February 26, 1999, the trial court found the defendant guilty as charged. On April 5, 1999, the trial court sentenced the defendant to three years without the benefit of probation, parole or suspension of sentence. On that same date, the state filed a multiple bill alleging the defendant to be a second felony offender. The defendant pled guilty to the multiple bill and waived all sentencing delays. The trial court vacated the previous sentence and re-sentenced the defendant to ten years without benefits. On April 19, 2000, the defendant filed a pro se application for reduction of sentence, which the trial court denied. On May 8, 2000, the defendant filed a pro se application for writ of habeas corpus, which the trial court denied. The defendant then filed a writ application with this court 2001-K-1635. On October 23, 2001, the writ application was granted to transfer the writ

application to a motion for an out of time appeal. On November 20, 2001, the trial court held a hearing to determine if the defendant waived her right to an appeal. The trial court granted the appeal.

FACTS

On July 18, 1998, Hansey Lackings, the defendant's boyfriend, had an argument with the victim Clark Kent. Mr. Kent had been living with the defendant and Mr. Lackings since his release from jail. Mr. Lackings had asked Mr. Kent to leave their home because Mr. Lackings suspected Mr. Kent had been stealing from them. After the argument Mr. Lackings left his home to go to the store, leaving Mr. Kent standing on the front porch.

According to the defendant, she entered her home, and left Mr. Kent on the front porch when Mr. Lackings went to the store. The defendant further testified that Mr. Kent entered her home and asked her for money, and when she refused Mr. Kent attacked her. The defendant testified that during the attack she received a cut on her lip, her house was ransacked, and her dentures were broken. During the struggle the defendant attempted to leave her home on more than one occasion, but Mr. Kent blocked her path.

According to the defendant she retrieved a knife from a toolbox during the struggle with Mr. Kent to end the attack and escape the house. The defendant testified that when she made it to the front porch Mr. Kent tried to

pull her back into the house, so she stabbed him one last time and ran to her friend's house.

Officers Robert Hickman and Andrew Whitaker of the New Orleans Police Department arrived on the scene and found Mr. Kent on the front porch of the defendant's home. Ernest Stewart, a twelve year-old boy from the neighborhood, told the police, "Ms. Cat" stabbed the man. Ernest also told the police officers the defendant had gone to a house down the street. Ernest led Officer Hickman to the address where the defendant was standing in the doorway.

Officer Hickman testified that when he approached the defendant in the doorway to inform her that she was under arrest the defendant closed the door in his face. When Officer Hickman opened the door he saw the defendant place a pocketknife on the television in the living room. Officer Hickman pursued the defendant through the residence, out of a side door up Piety Street to Claiborne Avenue where the defendant was apprehended. According to Officer Hickman, the defendant stated, "I'm tired of him beating my ass, using abusing me. If I had to do it again, I'd do it again." Officer Hickman placed the defendant under arrest, read her rights, and took her back to the scene where Ernest Stewart positively identified the defendant.

Mr. Lackings testified that when he returned from the store he found his house in a mess. The bathroom door had been knocked off of its hinges and the furniture was out of place as if someone had been, “tussling with it.” Mr. Lackings further testified that he found blood on the floor leading from the bedroom to the living room.

The defendant testified that she stabbed Mr. Kent in self-defense because Mr. Kent attacked her.

Mr. Kent testified that he and the defendant and a pregnant friend of the defendant’s smoked crack cocaine together. Mr. Kent further testified that after smoking the defendant began talking about Mr. Lackings and she became agitated. The defendant then pulled out the knife and began stabbing him. Mr. Kent alleges the defendant mistook him for Mr. Lackings.

ERRORS PATENT

A review of the record revealed that an error was made in the defendant’s sentence. As a second felony offender her sentence can be without the benefit of probation or suspension of sentence but not without the benefit of parole. Accordingly, the prohibition of parole in the defendant’s sentence is to be deleted.

ASSIGNMENT OF ERROR NUMBER 1

The defendant complains there was insufficient evidence to support

the verdict of aggravated battery, and the state failed to negate self-defense.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Shapiro, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. La. R.S. 15:438 is not a separate test from Jackson, but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. State v. Wright, 445 So.2d 1198 (La. 1984).

The trier of fact may accept or reject, in whole or in part, the testimony of any witness. State v. Patton, 479 So.2d 625 (La. App. 1 Cir. 11/19/85).

La. R.S. 14:34 defines aggravated battery as a battery committed with a dangerous weapon.

La. R.S. 14:33 defines a battery as the intentional use of force or violence upon the person of another; or the intentional administration of a poison or other noxious liquid or substance to another.

Aggravated battery is a general intent crime, meaning that the state need only prove the offender must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. State in Interest of H.L.F., 97-2651, p.3 (La. App. 4 Cir. 5/20/98), 713 So.2d 810, 812.

To support a conviction of aggravated battery the state has the burden to prove three elements: 1) that the defendant intentionally used force or violence against the victim, 2) that the force or violence was inflicted with a dangerous weapon, and, 3) that the dangerous weapon was used in a manner likely to cause death or great bodily harm. State v. Rainey, 98-436, P. 10 (La. App. 5 Cir. 11/25/98), 722 So.2d 1097, 1102.

The defendant complains that inconsistencies in the victim and witness' testimony contradicted the essential elements of the state's case. It is not the function of a reviewing court on appeal of a criminal conviction to evaluate the credibility of witnesses and to overturn a trial court on its

factual determination of guilt. It is the role of the fact finder to weigh the respective credibility of the witnesses, and an appellate court should not second guess the credibility determination of the trier of fact beyond the sufficiency evaluation under Jackson v. Virginia, id. State v. Barnes, 491 So.2d 42, 50 (La. App. 5 Cir. 6/2/86).

In the instant case the defendant had the required general intent to commit aggravated battery. The stab wounds inflicted upon the victim with a pocketknife were reasonably certain to produce serious bodily injury or death. Additionally, the conviction was supported by the victim's testimony and the testimony of Ernest Stewart who witnessed the infliction of at least one stab wound.

The defendant further complains the state failed to negate self-defense. The Fifth Circuit in State v. Barnes, id., citing State v. Freeman, 427 So.2d 1161 (La. 2/23/83) found:

[I]n the non-homicide situation, the defense of self-defense requires a dual inquiry; an objective inquiry into whether the force used was reasonable under the circumstances; a subjective inquiry into whether the force was apparently necessary. Thus, since the subjective inquiry is required, it is the defendant who would be in a better position to know those subjective facts. In fairness to the state this court believes that it would be placing an onerous burden on the state to disprove subjective influences on the defendant as it relates to self-defense or defense of another especially since the defendant has these facts at his

disposal to produce to the court. (Citations omitted)

This Court, as appellate reviewer, will not overturn the trial court's factual determination of the credibility of the defendant in her assertion of facts supporting her claim of self-defense. The trial judge in the instant case heard the testimony of the defendant and Mr. Kent and found Mr. Kent to be more credible. There is nothing in the record that indicates the trial judge abused her discretion in making her credibility determination. Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 2

The defendant complains the trial court failed to advise the defendant of her right to remain silent in the multiple bill hearing before she admitted that she was the same person who was previously convicted.

In the instant case during her trial testimony the defendant admitted to having been convicted about twenty years ago of manslaughter and to being on probation for a 1995 manslaughter conviction. It was this 1995 conviction that was used in the multiple bill hearing. Additionally, when asked by the trial judge, the defendant indicated, as part of a plea agreement, during the sentencing/multiple bill hearing that she and her attorney had reviewed and signed a waiver of rights form. The defendant also indicated

that she reviewed and initialed each right being waived, including the right against self-incrimination, with her attorney. In State v. Martin, 400 So.2d 1063 (La. 3/2/81), the Louisiana Supreme Court found that the trial court has a right in an habitual offender hearing to take judicial notice of any prior hearing which was part of the same case he had previously tried. In this case, the trial court determined that the defendant understood her rights prior to her admitting at the multiple bill hearing that she had committed another crime. This assignment of error is also without merit.

For these reasons, we affirm the defendant's conviction, we amend the sentence to delete the prohibition of parole eligibility, and we affirm the sentence as amended.

**CONVICTION AFFIRMED; SENTENCE AMENDED, AND
SENTENCE AFFIRMED AS AMENDED**